

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

COY PHELPS,

Plaintiff,

v.

DAVID WINN, POTOLICCHIO, and HAAS,

Defendants.

Civ. No. 05-CV-40003-GAO

DEFENDANTS' MOTION FOR A MORE DEFINITE STATEMENT

Pursuant to Federal Rule of Civil Procedure 12(e) ("Rule 12(e)"), the Defendants David Winn, B. Potolicchio, and H. Haas, through their undersigned counsel, hereby move the Court to order the Plaintiff, Coy Phelps, to file a Complaint alleging, in a concise manner and by numbered paragraphs, the basis for jurisdiction, the cause of action pursued, the facts upon which the claim is based, and the relief sought by way of the Complaint.¹ Rule 12(e) provides that "[i]f a pleading [such as a Complaint] to which a responsive pleading is permitted [such as an Answer to a Complaint] is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading." In the case at bar, the Plaintiff has filed a Complaint to which, for the reasons provided below, Defendants cannot be reasonably required to answer.

On January 5, 2005, Plaintiff filed a Complaint, which consists of twenty-six (26) pages of single-spaced handwritten wording. A majority of the Complaint does not contain numbered

¹ Defendants note that, by an Order dated September 27, 2007, the Court dismissed some of the Plaintiff's causes of action. However, three causes of action survive.

paragraphs, and the Complaint fails to separate factual allegations into a form in which the Defendants can fairly respond.

WHEREFORE, for all of the foregoing reasons, the Defendants respectfully request that the Court direct the Plaintiff to file a Complaint that states, in a concise manner and by numbered paragraphs, the basis for jurisdiction, the causes of action pursued, the facts upon which the claims are based, and the relief sought by way of Plaintiff's Complaint.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ Sonya A. Rao
SONYA A. RAO
Assistant U.S. Attorney
John J. Moakley U.S. Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100

Date: November 2, 2007

CERTIFICATE PURSUANT TO LR. 7.1(A)(2)

The Defendants take the position that, because LR. 7.1(A)(2) requires "counsel" to confer, the Rule is inapplicable where, as here, Plaintiff is proceeding pro se and is incarcerated. To the extent the Court considers the Rule applicable, the undersigned requests that it be waived here.

By: /s/ Sonya A. Rao
SONYA A. RAO
Assistant U.S. Attorney
John J. Moakley U.S. Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100

Date: November 2, 2007

CERTIFICATE OF SERVICE

I certify that, on November 2, 2007, I caused a copy of the foregoing **DEFENDANTS' MOTION FOR A MORE DEFINITE STATEMENT** to be served, via first class mail, postage pre-paid, on the following pro se Plaintiff:

Coy Phelps, #78872-011
FMC Devens
P. O. Box 879
Ayer, Massachusetts 01432.

By: /s/ Sonya A. Rao
SONYA A. RAO
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Date: November 2, 2007